88-48

Supreme Court, U.S.
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No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

OFFICER PRAET, individually and as a Police Officer of the City of Orange,
Petitioner,

vs.

SONYA KINGSLEY,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION THREE

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the state court of appeal's analysis of the qualified immunity defense is in conflict with this Court's decision in Anderson v. Creighton, ___ U.S. ___, 107 S.Ct. 3034, ___ L.Ed.2d ___ (1987).

2. Whether the qualified immunity defense applies to Officer Praet's actions or whether that issue should be remanded to the trial court for determination in light of Anderson.

LIST OF PARTIES AND RULE 28.1 INFORMATION

The parties to the California proceedings below were:

Petitioner, OFFICER PRAET, individually and as a Police Officer of the City of Orange; and

Respondent, SONYA KINGSLEY.

[Additional party Defendants included CITY OF ORANGE and BANK OF AMERICA. The trial court found that Defendant CITY OF ORANGE had no liability to Respondent. The California Court of Appeal upheld that ruling in all respects. Defendant BANK OF AMERICA was dismissed prior to the trial of this action.]

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Pierson v. Ray, 386 U.S. 547, 87 S.Ct. 1213, 18 L.Ed.2d 288 (1967) — 9

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Amendment IV — 5

No. _____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1987

OFFICER PRAET, individually and as a Police Officer of the City of Orange,

Petitioner,

vs.

SONYA KINGSLEY,

Respondent.

PETITION FOR WRIT OF CERTIORARI

Petitioner, OFFICER PRAET, prays that a Writ of Certiorari issue to review the decision of the Court of Appeal of the State of California, Fourth Appellate District, Division Three, granting, in part, Respondent's Appeal. Respondent was seeking reversal of a judgment after trial entered against her on May 20, 1985, and finding for CITY OF ORANGE and OFFICER PRAET on all causes of action.

JURISDICTION

Respondent timely filed her Notice of Appeal from the May 20, 1985, judgment of Judge Robert J. Polis, Judge of the Superior Court, County of Orange, California. The state court of appeal filed its unpublished decision on January 26, 1988. Petitioner's Petition for Rehearing was denied on February 22, 1988. Thereafter, Petitioner petitioned for review by the California Supreme Court. That Petition was also denied on April 6, 1988, and the Remittitur was issued on April 8, 1988.

The jurisdiction of this Court is invoked under:

(a) Article 3, Section 2, Clause 2, United States Constitution; and

(b) 28 United States Code, Section 1257(3).

The Opinion of the California Court of Appeal, the Remittitur issued by that court, and their Order Denying Petition for Rehearing are filed under separate cover concurrently with this Petition as Appendices A, B, and D. Filed concurrently with this Petition under separate cover as Appendix C is the Order Denying Review by the Supreme Court of the State of California. Also filed under separate cover concurrently with this Petition as Appendix E is the Oral Statement of Decision by the state trial court in the form of a partial reporter's transcript.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Amendment IV of the United States Constitution:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . .
>
> (As Applied to the States)

42 United States Code, Section 1983:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

This Petition seeks to ensure that City of Orange Police Officer Praet is allowed to present the defense of his qualified immunity to Respondent's civil rights cause of action. Specifically, this Petition requests a determination that the state court of appeal's analysis of the immunity conflicts with this Court's own decisions.

This Petition further requests a determination that the qualified immunity defense is applicable to Officer Praet's actions. In the alternative, this Petition asks that the issue of the officer's qualified immunity from liability be remanded to the trial court for determination there in light of this Court's holding in Anderson v. Creighton, ___ U.S. ___, 107

S.Ct. 3034, ___ L.Ed.2d ___ (1987).

The underlying case arises out of Officer Praet's investigative detention of Respondent, Sonya Kingsley. Both the state trial court and court of appeal determined the detention to be lawful, inasmuch as it was based upon the officer's reasonable suspicions that Respondent might be involved in a series of bank robberies. During the course of the detention, the officer initially searched Respondent's purse for weapons. Later, when Officer Praet discovered that Respondent had numerous aliases and used several addresses, he looked through the purse a second time for further identification.

At the conclusion of the state court trial, the superior court held that

Officer Praet's actions were entirely reasonable and lawful. The second search of the purse was held to be valid "as a product of the suspicious circumstances that were developing around the identification." Statement of Decision by the Honorable Robert Polis, Judge of the Superior Court of the County of Orange, State of California, filed concurrently with this Petition as Appendix E, at page E-55. This Court is respectfully referred to pages E-20 through E-56 of the Statement of Decision for a description of the circumstances surrounding Officer Praet's second search of the purse.

Respondent appealed.

The court of appeal upheld the trial court's determination in all respects,

except as to the second search of Respondent's purse. The court of appeal found that search to be a constitutional violation.

The court of appeal also summarily dismissed the possibility that the police officer's actions could be protected by the defense of qualified immunity, even though the immunity issue had not yet been raised directly by the parties. The state court of appeal relied on this Court's decisions in Harlow v. Fitzgerald, 457 U.S. 800, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982), and Pierson v. Ray, 386 U.S. 547, 87 S.Ct. 1213, 18 L.Ed.2d 288 (1967), in holding as follows:

> While a "good faith" defense is available in section 1983 actions (Harlow v. Fitzgerald (1982) 457 U.S. 800, 815; Pierson v. Ray (1967) 386 U.S. 547, 557), the facts in this

> case do not support such a claim in connection with the second search of plaintiff's purse. Officer Praet did not claim a subjective belief that he had probable cause to arrest plaintiff, and the objective facts would not support a finding of a good faith belief in the right to search.

Opinion of the Court of Appeal of the State of California, Fourth Appellate District, Division Three, filed concurrently with this Petition as Appendix A, at pages A32-33.

HOW THE FEDERAL QUESTION WAS PRESENTED

Since the trial court found no constitutional violation, the immunity defense was not addressed directly until the California Court of Appeal raised the issue sua sponte. In his Petition for Rehearing, Officer Praet argued the defense in light of Anderson, but his Petition was denied without comment. A

Petition for Review to the California Supreme Court also emphasized the conflict between Anderson and the court of appeal opinion. That Petition was also denied without comment.

REASONS TO GRANT THE WRIT

The court of appeal analysis of the qualified immunity defense is in direct conflict with this Court's decision in Anderson v. Creighton, ____U.S.____, 107 S.Ct. 3034, 3040, ___ L.Ed.2d ___ (1987), wherein it was specifically held that an officer's subjective beliefs about the legality of a search are irrelevant. As this Court emphasized in Anderson, the critical inquiry is whether a reasonable officer could have believed the search to be lawful, "in light of clearly established law and the information the searching officers

possessed." Id.

The state court of appeal, however, suggested that the second search could have been justified only if Officer Praet had testified to a subjective belief in having probable cause to arrest. The court of appeal opinion further conflicts with this Court's analysis in Anderson by not giving any serious consideration to the unsettled law in California regarding searches for identification.

Most importantly, if the court of appeal decision is allowed to stand, Officer Praet will effectively be precluded from even presenting the qualified immunity defense. Since the trial court found no constitutional violation, the immunity defense was not

an issue and was not argued directly. By misconstruing the application of the defense, the state court of appeal has thereby deprived Officer Praet of a defense guaranteed under federal law.

The full record clearly reflects Officer Praet's interest in determining Respondent's true identity. Were this Court to review the trial transcript and related briefs, the applicability of the immunity defense in light of Anderson would be obvious.

In the alternative, however, the issue of Officer Praet's entitlement to the qualified immunity defense should be remanded to the trial court for determination in light of all the evidence.

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted. In the alternative, the qualified immunity issue should be remanded to the trial court.

Dated: June 27, 1988

Respectfully submitted,

JAMES P. COLLINS, JR.

Attorneys for Petitioner